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lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mar bub, melongene, mesple, mizuna, mongosteen, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recaio, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, and yam yu choy.

(i) For 2002 contracts only, fruits, vegetables, and wild rice may be planted on excess base acres. Such plantings shall:

(1) Not be a violation of the contract

(2) Result in a reduction of direct and counter-cyclical payments in accordance with paragraph (f) of this section.

[67 FR 64751, Oct. 21, 2002, as amended at 68 FR 16184, Apr. 3, 2003; 68 FR 37939, June 26, 2003]

§ 1412.408 Redistributing base acreage.

(a)(1) Subject to the limitation in paragraph (a)(3) of this section, the redistribution of a farm's base acreage shall be allowed when all owners of the farm execute and submit a written request on a CCC-approved form for such redistribution to the FSA county office where the records for the farm are administratively maintained.

(2) If the land of the farm is subject to a deed of trust, lien, or mortgage, the holder of the deed of trust, lien, or mortgage must agree to the redistribution of base acreage.

(3) Redistribution of a farm's base acreage to negate or reduce a program violation is prohibited.

[68 FR 37939, June 26, 2003]

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Subpart E—Financial Considerations Including Sharing Direct and Counter-Cyclical Payments

SOURCE: 67 FR 64751, Oct. 21, 2002, unless otherwise noted.

§ 1412.501 Limitation of direct and counter-cyclical payments.

(a) The sum total of all annual direct payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

(b) The sum total of all annual counter-cyclical payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

(c) The amount of 2002 direct and counter-cyclical payments for a farm shall not exceed the maximum amount that would have been paid based on the number of persons as determined in accordance with part 1400 of this chapter on the farm as of May 13, 2002.

(d) The provisions of part 1400 of this chapter apply to this part.

§ 1412.502 Direct payment provisions.

(a) For 2003 through 2007 contracts, a final direct payment shall be made to eligible producers on a farm enrolled in a contract with respect to covered commodities and peanuts for which payment yields and base acres are established on or after October 1 of the fiscal year following the fiscal year of the contract in which the direct payment was earned.

(b) At the option of the producer, direct payments for the farm with respect to covered commodities and peanuts for which payment yields and base acres are established, shall be paid in any month from December through September of the fiscal year of the contract, as requested by the producer as an advance payment based on 50 percent of the direct payment rate for 2003 through 2005 contracts, 40 percent of the direct payment rate for 2006 contracts, and 22 percent of the direct payment rate for 2007 contracts. For any producer to receive an advance direct payment, all producers sharing in the direct payments for the farm must:

(1) Be in compliance with all requirements of the contract and the requirements in this part at the time of the advance payment; and

(2) Sign the contract designating payment shares and provide supporting documentation as specified in part 12 of this title and parts 1400 and 1405 of this chapter, if applicable. If all producers on the farm have not signed the contract designating payment shares in accordance with this paragraph, then no producer shall be eligible for any payment for that farm for that contract.

(c) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the direct payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof shall not become available for any other producer; and

(2) The producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter shall be applicable to all unearned payments.

(d) The payment rates used to calculate direct payments with respect to covered commodities and peanuts on a farm enrolled in a contract shall be as follows:

- (1) Wheat—\$0.52/bu.
- (2) Corn—\$0.28/bu.
- (3) Grain sorghum—\$0.35/bu.
- (4) Barley—\$0.24/bu.
- (5) Oats—\$0.024/bu.
- (6) Upland cotton—\$0.0667/lb.
- (7) Rice—\$2.35/cwt.
- (8) Soybeans—\$0.44/bu.
- (9) Other oilseeds—\$0.0080/lb.
- (10) Peanuts—\$36.00/ton.

(e) For 2003 through 2007 contracts, subject to the limitation in accordance with §1412.501 and part 1400 of this chapter, the final direct payment amount to be paid to the producers on a farm enrolled in a contract with respect to the covered commodities and peanuts for which payment yields and base acres are established shall be equal to the product of:

(1) The payment rate specified in paragraph (d) of this section, multiplied by

(2) The payment acres of the covered commodity and peanuts on the farm enrolled in a contract, minus any acre reduction in accordance with §1412.407(g), multiplied by

(3) The payment yield for the covered commodity and peanuts on the farm enrolled in a contract as determined in accordance with §1412.301, §1412.302 and subpart G of this part, minus

(4) Any reduction calculated in accordance with subpart F of this part, minus

(5) Any advance payment received in accordance with paragraph (b) of this section.

(f) For 2002 contracts, the direct payment amount to be paid to the producers on a farm enrolled in a contract with respect to the covered commodities for which payment yields and base acres are established shall be equal to the result of the amount calculated in accordance with paragraphs (e)(1) through (3) of this section minus all of the following:

(1) Any amount of payment received under a production flexibility contract for fiscal year 2002 in accordance with the Federal Agriculture Improvement and Reform Act of 1996;

(2) Any reduction calculated in accordance with subpart F of this part, with credit for any amount reduced under the production flexibility contract for the farm for fiscal year 2002 for the same contract violation; and

(3) Any reduction calculated in accordance with §1412.407(j).

(g)(1) The payment of any amount due any producer on a farm enrolled in a contract shall be made only after all the producers subject to the contract are determined to be in full compliance with the contract and the requirements in this part.

(2) A producer on a farm enrolled in a contract may receive a payment amount due without respect to the eligibility of other producers on the farm if:

(i) The producer is in full compliance with the contract and the requirements in this part;

(ii) The payment of such amount does not affect adversely nor defeat the purpose of the program, as determined by the Deputy Administrator; and

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(iii) The payment is approved by the Deputy Administrator.

(h) For 2002 contracts, the direct payment amount to be paid to the historical peanut producer shall be made to the historical peanut producer on the base and yield established for the historical peanut producer, in accordance with subpart G of this part.

[67 FR 64751, Oct. 21, 2002, as amended at 71 FR 17983, Apr. 10, 2006]

§ 1412.503 Counter-cyclical payment provisions.

(a) For the 2002 through 2007 contracts, a counter-cyclical payment shall be made to eligible producers on a farm enrolled in a contract with respect to covered commodities for which payment yield and base acres are established, and with respect to peanuts on a farm enrolled in a contract for 2003 through 2007:

(1) Only if the effective price for the covered commodity or peanuts, as determined in accordance with paragraph (b) of this section, is less than the target price of the covered commodity or peanuts, respectively, as determined in accordance with paragraph (c) of this section.

(2) As soon as practical, as determined by the Deputy Administrator, after the end of the 12-month marketing year for the covered commodity or peanuts, as applicable.

(b) For the purposes of paragraphs (a) and (g) of this section, the effective price for a covered commodity and peanuts, respectively, is equal to the sum of the following:

(1) The higher of:

(i) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as applicable, as determined by the Secretary; or

(ii) For 2002 and 2003 crop years the following rates:

- (A) Wheat—\$2.80/bu.
- (B) Corn—\$1.98/bu.
- (C) Grain sorghum—\$1.98/bu.
- (D) Barley—\$1.88/bu.
- (E) Oats—\$1.35/bu.
- (F) Upland cotton—\$0.52/lb.
- (G) Rice—\$6.50/cwt.
- (H) Soybeans—\$5.00/bu.
- (I) Other oilseeds—\$0.0960/lb.
- (J) Peanuts—\$355.00/ton.

(iii) For 2004 through 2007 crop years the following rates:

- (A) Wheat—\$2.75/bu.
- (B) Corn—\$1.95/bu.
- (C) Grain sorghum—\$1.95/bu.
- (D) Barley—\$1.85/bu.
- (E) Oats—\$1.33/bu.
- (F) Upland cotton—\$0.52/lb.
- (G) Rice—\$6.50/cwt.
- (H) Soybeans—\$5.00/bu.
- (I) Other oilseeds—\$0.0930/lb.
- (J) Peanuts—\$355.00/ton.

(2) The direct payment rate for the covered commodity as provided in § 1412.502(d).

(c) For the purposes of paragraphs (a) and (g) of this section, the target prices are as follows:

(1) For 2002 and 2003 crop years:

- (i) Wheat—\$3.86/bu.
- (ii) Corn—\$2.60/bu.
- (iii) Grain sorghum—\$2.54/bu.
- (iv) Barley—\$2.21/bu.
- (v) Oats—\$1.40/bu.
- (vi) Upland cotton—\$0.7240/lb.
- (vii) Rice—\$10.50/cwt.
- (viii) Soybeans—\$5.80/bu.
- (ix) Other oilseeds—\$0.0980/lb.
- (x) Peanuts—\$495.00/ton.

(2) For 2004 through 2007 crop years:

- (i) Wheat—\$3.92/bu.
- (ii) Corn—\$2.63/bu.
- (iii) Grain sorghum—\$2.57/bu.
- (iv) Barley—\$2.24/bu.
- (v) Oats—\$1.44/bu.
- (vi) Upland cotton—\$0.7240/lb.
- (vii) Rice—\$10.50/cwt.
- (viii) Soybeans—\$5.80/bu.
- (ix) Other oilseeds—\$0.1010/lb.
- (x) Peanuts—\$495.00/ton.

(d) The payment rate used to calculate counter-cyclical payments with respect to covered commodities and peanuts for which payment yields and base acres are established on a farm enrolled in a contract is equal to the result of:

(1) The target price of the covered commodity as determined in accordance with paragraph (c) of this section, minus

(2) The effective price of the covered commodity as determined in accordance with paragraph (b) of this section.

(e) For 2002 through 2007 contracts, when counter-cyclical payments are required in accordance with paragraph (a) of this section, subject to the limitation in accordance with § 1412.501 and